

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

**DONNA BATZINGER**

*Plaintiff*

Vs,

**MERCANTILE ADJUSTMENT BUREAU INC  
ASSET MANAGEMENT PROFESSIONALS LLC ,  
LVNV FUNDING LLC**

*Defendants*

Case no. 1:11-CV-0060  
(GLS/DRH)

**COMPLAINT**

*Jury Trial Demanded*

Albany County        }  
New York State        } ss:

DONNA BATZINGER, the plaintiff, by her attorney Anthony J. Pietrafesa, Esq., complains of the defendant by alleging and showing that:

**NATURE OF ACTION**

1. This is an action to enforce the Fair Debt Collection Practice Act 15 USC §1692 *et seq.* (FDCPA)

**JURIDICTION AND VENUE**

2. This Court has federal question jurisdiction under 15 USC §1692k (d) and 28 USC §1331.
3. Venue is proper in this district per 28 USC §1391 (b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district because defendants conducts business in this district, have agents in this district and the collection letters and communications complained of were sent to this district.

## **PARTIES**

4. At all relevant times:
  - a. I reside at Westside Dr, Ballston Lake, Saratoga County, New York State, within this district,
  - b. I am a "consumer" as that term is defined in the FDCPA, in that I am an individual and who owes or allegedly owes a debt incurred primarily for personal or household use.
5. Upon information and belief, at all relevant times, the defendant Mercantile Adjustment Bureau LLC ( MAB) is:
  - a. a New York limited liability company authorized to do business in New York State, with a principal place of business at 6390 MAIN STREET WILLIAMSVILLE, NEW YORK, 14231 with an agent in this district;
  - b. Is a "debt collector" as that term is defined in the FDCPA;
  - c. Is in the business of collecting consumer debt for others by use of the mail, telephone, the courts of New York and other means of interstate commerce.
  - d. was directed, supervised and controlled by LVNV in this matter.

6. Upon information and belief, at all relevant times, the defendant Asset Management Professionals LLC (hereinafter "AMP"):
  - a. is a Georgia limited liability company authorized to do business in New York State, with a principal place of business at Woodstock, Georgia and agent in this district.
  - b. Is a "debt collector" as that term is defined in the FDCPA;
  - c. Is in the business of collecting consumer debt for others by use of the mail, telephone and other means of interstate commerce.
  - d. was directed, supervised and controlled by LVNV in this matter.
7. At all relevant times, the defendant LVNV FUNDING LLC (hereinafter "LVNV"):
  - a. is a Delaware limited liability company authorized to do business in New York State, with a principal place of business at 15 South Main St. Ste 600 Greenville, South Carolina, 29601 and has an agent in New York State;
  - b. Is a "debt collector" as that term is defined in the FDCPA;
  - c. Is in the business of collecting consumer debt for others by use of the mail, telephone and other means of interstate commerce.
  - d. directed, supervised and approved the acts of the other defendants.

## **FACTUAL ALLEGATIONS**

8. In 2007 LVNV sued me in the Supreme Court for Saratoga County to collect a debt it said I owed to Sears, which it claimed it had bought.
9. A true copy of the summons and complaint filed in that action is attached as Exhibit A.
10. The debt was a "debt" as that term is defined by the FDCPA.
11. The debt was identified by LVNV as account number 0357266404809. ( "Debt") ( See affidavit of Sue Argentieri at Exhibit A)
12. The matter was settled in December 2008 when LVNV accepted the sum of \$1000.00 in full satisfaction of its claim.
13. A stipulation discontinuing the action with prejudice was signed by my lawyer and LVNV's lawyer and filed with the Saratoga County Clerk on December 15, 2008.
14. A true copy of the stipulation filed with the Court is attached as Exhibit B.
15. Despite ( or in spite of ) the stipulation settling its claim against me, LVNV took continuing action to collect the Debt.
16. First, LVNV had APM send me a letter , dated March 4, 2010, in which APM demanded I pay LVNV \$3202 for a so-called "Citibank " account. However, the account number on the letter matches the account number for the Sears account we had settled ( i.e., 0357266404809)
17. A true copy of the letter LVNV had APM send me is attached as Exhibit C.

18. By letter dated March 10, 2010, my attorney asked AMP and LVNV to validate the debt. Neither AMP nor LVNV responded to his validation demand.
19. Second, LVNV had MAB send me a letter , dated September 7, 21010, in which MAB demanded I pay LVNV \$3703.91 for a so-called "Citibank " account. However, the account number on the letter matches the account number for the Sears account we had settled ( i.e., 0357266404809).
20. A true copy of the letter LVNV had MAB send me is attached as Exhibit D.
21. In other words, LVNV , APM , and MAB seek to collect a debt that does not exist and that I do not owe.
22. Third, LVNV continues to report to the credit reporting bureau Experian ( and others, as we are informed and believe), and has since December 2008, that I owe them for this Debt, when, in fact I paid them for this Debt.
23. A copy of my Experian report for September 2010, obtained from [freecreditreport.com](http://freecreditreport.com), showing this Debt ( identified in truncated fashion as 035726640xxxx) is attached to this as Exhibit E
24. The fact that LVNV continues to demand I pay it money for a Debt that does not exist, to ruin my credit in its attempt to do so, leaves me feeling confused, harassed, abused, anxious, distrustful of the legal system and has caused me emotional pain and suffering.

**COUNT 1**

*(Violation of the Fair Debt Collection Practices Act - all defendants)*

25. I repeat the previous allegations.
26. LVNV , APM and MAB's actions in trying to collect a Debt that does not exist violates the Fair Debt Collection Practices Act, 15 USC §1692e and 1692 f, because, *inter alia*:
  - i. Defendants mischaracterizes the amount , legal status, nature and character of the Debt in violation of 15 USC §1692e (2(a));
  - ii. Defendants, by their letters, falsely threaten action or seek to take action which they could not legally take or never intended to take, in violation of 15 USC 1692e(5)
  - iii. Defendants falsely represent the extinguished Debt as owed in violation of 15 USC §1692e(10);
  - iv. Defendants unfairly and unconscionably seek to collect an amount it is not entitled to by agreement or law, in violation of 15 USC §1692f and 15 USC §1692f(1)

**COUNT 2**

*(Violation of the Fair Debt Collections Act - LVNV)*

27. I repeat the allegations of the previous paragraphs.
28. LVNV's act of 1) reporting this Debt as a delinquent account to Experian and the other credit bureaus when it knows I have paid it, and 2) failing to remove the Debt from my credit report or change it to reflect our

settlement communicates to any person credit information which is known to LVNV or which LVNV should know to be false, in violation of 15 USC § 1692e(8)

**COUNT 3**

*(Violation of the Fair Debt Collection Practices Act - LVNV)*

29. I repeat the allegations of the previous paragraphs.
30. LVNV's act of ignoring my request to it and AMP to validate the debt and having MAB demand payment from me for this alleged debt before validating the debt violates 15 USC §1692e, 15 USC §1692f and 15 USC §1692g (b) .

**COUNT 4**

*(Violation of the Fair Debt Collection Practices Act - LVNV)*

31. I repeat the allegations of the previous paragraphs.
32. LVNV's act of ignoring the stipulation it signed settling the Debt and having AMP and MAB demand payment from me for this nonexistent debt and continuing to report the Debt as owed, violates 15 USC 1692d .

**COUNT 5**

*(Violation of the Fair Debt Collection Practices Act - MAB)*

33. I repeat the allegations of the previous paragraphs.

34. In its letter, MAB demands I pay LVNV \$3703.91 but then states " Please be advised that our client has authorized us to offer you substantial savings to settle this account. We will accept \$2080.27 if payment is received by 10/13/10. "
35. . MAB , by sending its letter, violates the FDCPA because:
  - a. MAB offers to settle an alleged debt for less than the creditor says is owed.
    - i. The Internal Revenue Code requires that if certain creditors forgive all or part of a debt, the amount forgiven in excess of \$600 must be reported by the creditor and reported by the debtor as income on the debtor's federal tax return.<sup>1</sup>
    - ii. In other words, the discount MAB offers has tax ramifications to the debtor.
    - iii. MAB, by its letter, deceives and seeks to mislead the debtor into accepting the attractive discounted amount without notifying him/her of the tax consequences of accepting the offer, in violation of 15 USC §§ 1692e , 1692e(2), 1692e(10) and 1692f
26. The defendants' actions during the preceding Counts were knowing, intentional and persistent.
27. As a result of their actions, I feel abused, confused, angry, anxious, violated.

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<sup>1</sup> 26 USC §61(a)(12) ; 26 USC §6050P ; 26 CFR §1.6050P

**JURY DEMAND**

I ask for a trial by jury of all issues.

**WHEREFORE**, I ask the Court for judgment:

- a. declaring the actions of defendants in violation of the FDCPA ;
- b. awarding me actual damages , jointly and severally;
- c. awarding statutory damages in an amount of up to \$1,000.00 against each of the defendants for their respective acts, per 15 USC §1692k;
- d. awarding reasonable attorney's fees per 15 USC §1692k;
- e. awarding me costs and disbursements of this action, and
- f. such other, further and different relief as the Court finds proper here.

DATED: January 18, 2011

*S/ Anthony J Pietrafesa*

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**ANTHONY J PIETRAFESA ESQ. ( 102368)**

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VERIFICATION

New York State    }  
Albany County    } ss:

Donna Batzinger, being duly sworn deposes and says that: I am one the plaintiff in this action. I have read the foregoing complaint and know the contents of it; the contents are true to my knowledge, except as to matters stated to be alleged upon information and belief, and that as to those matters I believe them to be true.

*s/ Donna Batzinger*

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Sworn to and Subscribed  
Before me on 1/18/2011

*s/ Anthony J Pietrafesa*

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Anthony J. Pietrafesa  
Notary Public Albany County 02PI655974  
My Commission Expires 11/20/2014

